IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

WP(C).No. 19641 of 2003(L)

PETITIONER:

JAYA JEWELLERS, PALACE ROAD,
THRISSUR- 680 020, REPRESENTED BY ITS
MANAGING PARTNER, SURAJ PRAKASH M.J.

BY ADV. SRI.K.P. DANDAPANI

RESPONDENTS:
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1. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

2. THE DEPUTY COMMISSIONER, COMMERCIAL
TAXES, THRISSUR.

3. THE INTELLIGENCE OFFICER (SQUAD NO.II)
DEPARTMENT OF COMMERCIAL TAXES,
THRISSUR.

BY SR. GOVERNMENT PLEADER SHRI MUHAMMED RAFIQ.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 19641 of 2003(L)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	:	PHOTOCOPY OF WRITTEN REQUEST SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT ON 18.10.1997.
EXT.P2	:	PHOTOCOPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT NO. ITC.7/97-98 DATED 18.10.1997 ISSUED TO THE PETITIONER.
EXT.P3	:	PHOTOCOPY OF REVISION PETITION SUBMITTED BY THE PETITIONER IN FORM NO.31, BEFORE THE 2ND RESPONDENT ON 02.01.1998.
EXT.P4	:	PHOTOCOPY OF PROCEEDINGS OF THE 2ND RESPONDENT ISSUED TO THE PETITIONER, VIDE NO. R1-33/98 DATED 04.08.2000.
EXT.P5	:	PHOTOCOPY OF REVISION PETITION SUBMITTED BY THE PETITIONER IN FORM NO. 31 BEFORE THE 1ST RESPONDENT ON 14.11.2000.
EXT.P6	:	PHOTOCOPY OF ORDER NO.STRP.177/00 (R1-60157/00/CT) DATED 04.05.2002 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
EXT.P7	:	PHOTOCOPIES OF AFFIDAVITS SWORN BY M/S. P.D.MANOJ, C.E.ABY, SUMESH K.K., A.R. RAMESH AND K.K. SIVADAS, DATED 03.01.1998.

/TRUE COPY/

P.A. TO JUDGE.

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.P.(C) No. 19641 OF 2003

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Dated this the 20th September, 2007

J U D G M E N T

H.L. Dattu, C.J.:

The petitioner is a dealer registered under the provisions of the Kerala General Sales Tax Act, 1963 (hereinafter referred to as 'Act'). He is doing business in the name and style of -"Jaya Jewellers", at Palace Road, Thrissur. The business premises of the petitioner was inspected by the Sales Tax Officers on 13.10.1997. On such inspection, they have found that there was suppression of stock and non-maintenance of books of accounts as required under the rules. After such inspection, the Sales Tax Officers had seized the diaries,slips etc., from the possession of the dealer. This was done on 13.10.1997.

2. Nearly after five days, i.e, on 18.10.1997, the petitioner had filed an application before the Intelligence Officer (Squad No.2), Department of Commercial Taxes, Thrissur, inter alia accepting that on the date of the inspection,viz., 13.10.1997, since there was stock difference, the books of accounts had been seized by the Sales Tax Officers; and that he would accept the omission pointed out by the Sales Tax Officers and therefore, he is willing to compound the offence departmentally by paying a sum of Rs.One lakh, by way of compounding fee in lieu of the prosecution proceedings.

3. After the receipt of the application so filed, the third respondent, viz, Intelligence Officer has passed an order dated 18.10.1997, accepting the request of the petitioner to compound the offence departmentally and also by accepting a sum of Rs. One lakh as compounding fee by issuing a receipt. dated 18.10.1997. The order passed by the Intelligence Officer reads as

under:

> *"The above facts and figures go to show that the dealers have not maintained true and complete accounts for the year 97-98 violating the provisions of Section 27 of the K.G.S.T. Act, 1963 which constituted an offence punishable under Section 46 of the Act. When this has been pointed out, the Managing Partner has admitted offence and requested in writing to have the same compounded departmentally in lieu of prosecution. He has also paid a sum of Rs.1,00,000/- (Rupees One Lakh) only towards compounding fee as per Rt.No. 113256 dated 18.10.1997. In the circumstances the following orders are passed:-*
>
> ***ORDER NO. ITC.7-97/98 DT. 18.10.97***
>
> *The offence of non-maintenance of true and complete accounts for the year 97-98 committed by M/s. Jaya Jewellers, Palace Road, Thrissur, is compounded departmentally in lieu of prosecution in a sum of Rs.1,00,000/- (Rupees One lakh) only under Section 47 of the K.G.S.T. Act, 1963 by the dealers."*

4. Objecting to the aforesaid order passed by the Intelligence Officer, the petitioner/assessee had filed a Revision Petition before the Deputy Commissioner of Taxes, Thrissur under section 36 of the Act. The Deputy Commissioner of Taxes, after considering the various contentions raised and canvassed by the petitioner/assessee, has rejected the Revision Petition on the ground that the Revision Petition filed is not maintainable, since the

petitioner himself had compounded the offence departmentally in lieu of the prosecution proceedings. The order passed by the Deputy Commissioner of Commercial Taxes is as under:-

> *"In the circumstances the Intelligence Officer came to the conclusion that the Revision Petitioner did not maintain true and complete accounts violating the provision of Section 27 of KGST Act which constitutes an offence coming under Section 46 of the K.G.S.T. Act. When this was pointed out, the Managing Partner admitted the offence and requested in writing to have the same compounded departmentally in lieu of prosecution. The revision petitioner had remitted an amount of Rs. One lakh towards compounding fee as per Receipt No.113256 dt. 18.10.1997. The revision petitioner now challenges the order of Intelligence Officer compounding the offence. In the decision of Sri Sastha Trading Co. case 1991 (2) KLT 75, the Honourable High Court of Kerala has held that a person who has made an offer for compounding has no right of revision under Section 46 of KGST Act ignoring the compromise entered into. The revision petitioner cannot go behind the offer made by him in the compounding application so far the revision petitioner's case is concerned. In the light of the decision, the contention raised by the revision petitioner are not sustainable and acceptable. The contentions are therefore rejected. In the result the following orders are issued.*
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> ***ORDER No. R1-33/98 DATED 04.08.2000***
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> *In the circumstances explained above, the petition under Section 36 filed by M/s. Jaya Jewellers against the order read above is rejected. "*

5. Again, aggrieved by the aforesaid order passed by the Deputy Commissioner of Commercial Taxes, Thrissur, the petitioner/assessee had carried the matter before the Commissioner of Commercial Taxes, Thiruvananthapuram, by way of second Revision in S.T. R.P.No. 177 of 2000. The Commissioner of Commercial Taxes, by his/her order dated 04.05.2002 has rejected the Revision Petition. The relevant portion of that order is extracted below:

> *"If the petitioner had actually received 2605.400 gm of gold ornaments on the date of inspection as claimed, he had sufficient opportunity to establish the same before the Intelligence Officer. Besides, the petitioner had not raised any objection to the details of stock recorded in the shop inspection prepared at the time of inspection. As regards the payment of the compounding fee before receipt of the order, the facts and circumstances of the case indicate that the payment was made voluntarily by the petitioner. In any case, there was no compulsion on him to pay the compounding fee before he received the order. The contention that an admission made to opt for composition of offence raises only a rebuttable presumption is valid. However, the person who made the admission has to make out a convincing case to show that the admission was wrong or was made under any special circumstances. In the present case, the petitioner has not been able to substantiate his contention that the admission was made under constraint of the threat of a higher penalty or was contradictory as claimed.*
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> *In view of the foregoing, I find that the petitioner has not been able to substantiate his contentions. The revision petition is therefore dismissed. "*

6. Aggrieved by the orders passed by the Intelligence Officer, Deputy Commissioner of Commercial Taxes and the Commissioner of Commercial Taxes (viz., Exts.P2, P4 and P6), the petitioner/assessee is before this Court in this Writ Petition.

7. Learned counsel appearing for the petitioner would contend that the Deputy Commissioner of Commercial Taxes and Commissioner of Commercial Taxes are not justified in rejecting the Revision Petitions filed by the petitioner/assessee solely on the ground that a revision petition cannot be filed against an order of compounding, since the petitioner cannot be aggrieved person as envisaged under sections 36 and 38 of the Act. According to the learned counsel, the petitioner/assessee has every right to withdraw the consent made by him before the Intelligence Order and

therefore, the authorities are not justified in rejecting the Revision Petitions on the ground of maintainability of Revision Petition alone. In aid of his submission, learned counsel has brought to our notice the observations made by a Division Bench of this court in the case of ***Velimparambil Hardwares vs. State of Kerala ([*1994] 92 STC 98*).***

8. Per contra, learned Senior Government Pleader, Shri Muhammed Rafiq, appearing for the Revenue would submit that the authorities under the Act are justified in rejecting the Revision Petitions, since the petitioner had compounded the offence departmentally.

9. Sections 36 and 38 of the Act are relevant for the purpose of this case. Hence they are extracted below:

> *"36: **Power of revision of Deputy Commissioner on application**:-(1) Any person objecting to an order passed or proceeding recorded under this Act for which an appeal has not been provided for in Section 34 or Section 39 may, within a period of thirty days from the date on which a copy of the order or proceeding was served on him in the manner prescribed, file an application for revision of such order or proceeding to the Deputy Commissioner;*
>
> *Provided that the Deputy Commissioner may admit an application for revision presented after the expiration of the said period, if he is satisfied that the applicant had sufficient cause for not presenting the application within the said period.*
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> *(2) An application for revision shall be in the prescribed form and shall be verified in the prescribed manner and be accompanied by a fee of Two hundred rupees.*
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> *(3) On admitting an application for revision, the Deputy*

Commissioner may call for and examine the record of the order or proceeding against which the application has been preferred and may make such enquiry or cause such enquiry to be made and subject to the provisions of this Act pass such order thereon as he thinks fit.

(4) Notwithstanding that an application has been preferred under sub-section(1), the tax, fee or other amount shall be paid in accordance with the order or proceeding against which the application has been preferred.

Provided that the Deputy Commissioner may, in his discretion, give such directions as he thinks fit in regard to the payment of such tax, fee or other amount, if the applicant furnishes sufficient security to his satisfaction in such form and in such manner as may be prescribed.

(5) No order under this Section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

38. Powers of revision of the Board of Revenue on application:*-(1) Any person objecting to an order passed by the Deputy Commissioner under section 14A or under sub-section (1) of Section 35 or sub-section (3) of Section 36 may, within a period of thirty days from the date on which a copy of the order was served on him in the manner prescribed, file an application for revision of such order to the Board of Revenue;*

Provided that the Board of Revenue may admit an application presented after the expiry of the said period, if it is satisfied that the applicant has sufficient cause for not presenting the application within the said period.

(2) Such application for revision shall be in the prescribed form and shall be verified in the prescribed manner and be accompanied by a fee of five hundred rupees.

(3) On admitting an application for revision, the Board of Revenue may call for and examine the record of the order against which the application has been preferred and may make such enquiry or cause such enquiry to be made and subject to the provisions of this Act, pass such order thereon as it thinks fit.

(4) Notwithstanding that an application has been preferred under sub-section (1), the tax, fee or other amount shall be paid in accordance with the order against which the application has been preferred;

Provided that the Board of Revenue may, in its discretion, give such directions as it thinks fit in regard to the payment of such tax, fee or other amount, if the applicant furnishes sufficient security to its satisfaction in such manner as may be prescribed.

(5) No order under this Section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard. "

10. Section 36(1) and 38 of the Act authorises a person objecting to an order passed under the Act to prefer a Revision Petition before the Deputy Commissioner of Taxes and Commissioner of Commercial Taxes, if for any reason, no appeal has been filed against such an order .

11. The question that would arise for consideration and decision of this Court in this Writ Petition is, whether the petitioner can be a person who can object to an order passed by the Intelligence Officer of the Department.

12. Admittedly, the business premises of the petitioner was inspected by the Sales Tax Officers on 13.10.1997. After such inspection, they have

found out not only certain anomalies in the stocks but also non-maintainability of books of accounts by the dealer as required under the Rules. Nearly after five days from the date of inspection, the petitioner had filed an application before the authorities expressing his willingness to compound the offence departmentally. There was no threat or coercion from the side of the authorities, directing the petitioner to make any application after the date of inspection. If for any reason, the authorities had compelled the petitioner to make an application for compounding the offence departmentally, it was open to the petitioner to have filed a complaint against the authorities before the superior forum. But, in fact, the petitioner had filed an application before the authorities concerned to compound the offence departmentally. Once the offer is made, it is for the prescribed authority to determine whether the offence should be compounded or not. The process of compounding would be complete only when the money offered is accepted by the authority concerned. Once the compounding of the offence is complete, the person who has committed or reasonably suspected of having committed an offence under the Act cannot be aggrieved person.

13. In the present case, an offer was made by the assessee/dealer and it was accepted and there was exchange of money between the assessee and the authorities under the Act. Therefore, compounding the offence was complete. Therefore, it cannot be said that a person can object to such an order made by the authorities under the Act.

14. As we have already noticed , the provisions of Sections 36 and 38

of the Act authorises a person objecting to an order passed under the provisions of the Act, to file revision petition before the Deputy Commissioner or Commissioner of the Taxes. A person who has willingly offered and compounded the offence departmentally in lieu of prosecution proceedings cannot be a person who can object to an order passed under the provisions of the Act. In that view of the matter, both the authorities under the Act are justified in rejecting the Revision Petitions filed by the assessee/dealer.

15. Learned counsel for the petitioner/assessee relies upon the observation made by a Division Bench of this Court in ***Velimparambil Hardwares vs. State of Kerala ([*1994] 92 STC 98*).*** That was a case where the authorities had initiated best judgment proceedings after rejecting the returns filed by the assessee. In the aforesaid case, the court was pleased to observe as under:

> *"The compounding proceedings and the assessment proceedings are distinct and different. The materials in the compounding proceedings may be relevant and one of the factors which could be taken into account, along with others, by the sales tax authorities in the assessment proceedings. But it is open to the assessee to demonstrate by specific pleading and evidence in the assessment proceedings that the details or facts contained in the compounding proceedings are incorrect or untrue or the admissions and statements made in those proceedings were mistakenly made or rendered under peculiar context or circumstances. It should be so proved by cogent and substantial material. Vague generalisations or evasive*

references or casting doubts will not be enough. "

16. In our opinion, the said decision would not assist the petitioner in any manner whatsoever. In that view of the matter, in our opinion, both the authorities, viz., Deputy Commissioner of Commercial Taxes as well as Commissioner of Commercial Taxes are justified in rejecting the Revision Petitions filed by the petitioner/dealer/assessee since we are of the opinion that a person in respect of whom an order of compounding made is not entitled to challenge the same by filing a petition under Section 36 or 38 of the Act.

17. Accordingly, the Writ Petition requires to be rejected and it is rejected. Considering the facts and circumstances of the cases, both the parties are directed to bear their own costs.

18. I.A.No. 6141 of 2003 is also disposed of.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK.

H.L. DATTU, C.J.&
K.T. SANKARAN, J.

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W.P.(C) No. 19641 OF 2003

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Dated this the 20th September, 2007

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